

**Nov 12 2024**

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Allison Renee Lee, Circuit Court Judge

Appellate Case No. 2024-001506

Johnnie Cordero, ..... Petitioner,

v.

Valerie Moore, in her official capacity as Chair of The Richland County Democratic Party; The Richland County Democratic Party; Christale Spain, in her official capacity as Chair of The South Carolina Democratic Party; and The South Carolina Democratic Party, ..... Respondents.

**RETURN TO PETITION FOR A WRIT OF CERTIORARI**

Nekki Shutt (SC Bar 8784)  
Grant Burnette LeFever (SC Bar 103807)  
BURNETTE SHUTT & McDANIEL, PA  
912 Lady Street, 2nd Floor (29201)  
PO Box 1929  
Columbia, South Carolina 29202  
Telephone: (803) 904-7912  
Fax: (803) 904-7910  
[NShutt@BurnetteShutt.Law](mailto:NShutt@BurnetteShutt.Law)  
[GLeFever@BurnetteShutt.Law](mailto:GLeFever@BurnetteShutt.Law)

**ATTORNEYS FOR RESPONDENTS**

**TABLE OF CONTENTS**

Counter-Statement of the Case..... 1

Arguments.....5

I. THE COURT OF APPEALS CORRECTLY AFFIRMED THE TRIAL COURT’S DISMISSAL OF PETITIONER’S ACTION UNDER RULE 12(B)(6), SCRCF..... 5

    A. The Court of Appeals correctly determined that Petitioner’s arguments regarding the Uniform Declaratory Judgments Act and Rule 65(c), SCRCF were not preserved for appeal..... 5

    B. The Court of Appeals correctly affirmed the circuit court’s findings that the statutes Petitioner alleges were violated do not create a private right of action and that Petitioner lacked taxpayer standing, and Petitioner has raised no special and important reasons for reviewing this decision.....7

II. THE COURT OF APPEALS CORRECTLY CONCLUDED THAT PETITIONER FAILED TO PRESERVE TWO ARGUMENT FOR APPEAL. .... 7

III. THE COURT OF APPEALS’ DENIAL OF PETITIONER’S MOTION TO AMEND THE STATEMENT OF ISSUES ON APPEAL AND TO SUPPLEMENT THE RECORD ON APPEAL PURSUANT TO 212(B), SCACR, IS NOT A BASIS FOR GRANTING CERTIORARI.....8

Conclusion ..... 8

## **COUNTER-STATEMENT OF THE CASE**

The Statement of the Case contained in pro se Petitioner Johnnie Cordero's Petition for a Writ of Certiorari (Corrected) includes substantial commentary and argument beyond the facts material to the Court's consideration of the questions presented. See Rule 242(d)(2), SCACR ("The petition for writ of certiorari shall contain...[a] concise statement of the case, containing the facts material to the consideration of the questions presented.") Respondents object to Petitioner's extraneous commentary and argument and offer the following Counter-Statement of the Case:

Petitioner Johnnie Cordero ("Petitioner") commenced this action by filing a Summons and Complaint in the Richland County Court of Common Pleas on April 16, 2020. (Summ. & Compl., R. pp. 1-14.)

Respondents Matthew Kisner and the Richland County Democratic Party ("RCDP") were served with a copy of the Summons and Complaint on or about April 17, 2020.

Nekki Shutt, Esq., as counsel for Respondents, accepted service for Respondents Trav Robertson, Jr., and the South Carolina Democratic Party ("SCDP") on May 14, 2020. Upon acceptance of service by Shutt, the parties agreed to a deadline of June 17, 2020, for all Respondents to respond to the Complaint. (Extension of Time, R. p. 15.)

On May 29, 2020, Petitioner filed a First Amended Complaint ("FAC"), which he served on Respondents via U.S. Mail on May 22, 2020. (FAC, R. pp. 16-32.) The FAC asserts three causes of action: (1) violation of the state statutes governing party organization, specifically S.C. Code Ann. sections 7-9-70, -80, and -100; (2) violation of

the Voting Rights Act; and (3) violation of the First, Fourteenth, and Fifteenth Amendments to the U.S. Constitution, under 42 U.S.C. § 1983. Id.

On June 9, 2020, Respondents SCDP and Robertson, with the consent of Respondents RCDP and Kisner, removed the action to the U.S. District Court for the District of South Carolina, Columbia Division, based on federal question jurisdiction. (Notice of Removal, R. pp. 35-93.)

On June 16, 2020, Respondents filed a Joint Motion to Dismiss Petitioner's First Amended Complaint, pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim upon which relief can be granted. (Resp. Fed. Mot. to Dismiss, ECF 9, R. pp. 94-95.)

On September 25, 2020, the federal district court granted Respondents' Joint Motion to Dismiss as to Petitioner's Voting Rights Act and § 1983 claims and remanded Petitioner's state election law claim to the Richland County Court of Common Pleas. (Fed. R&R, ECF 34, R. pp. 96-103; Fed. Order Adopting R&R, ECF 40, R. pp. 104-09.)

The Richland County Clerk of Court filed the certified copy of the remand order on September 30, 2020. (Fed. Order Adopting R&R, ECF 40, R. pp. 104-09.)

On October 26, 2020, Respondents filed a Joint Motion to Dismiss pursuant to Rule 12(b)(6), SCRCF, seeking dismissal of Petitioner's only remaining claim, violation of S.C. Code Ann. sections 7-9-70, -80, and -100. (Resp. Mot. to Dismiss, R. pp. 111-12.) The basis for Respondents' motion was that there is no private right of action to enforce the state statutes Petitioner seeks to enforce and that Petitioner's claims for relief are moot. Id.

On November 16, 2020, Petitioner filed a Motion for Default Judgment pursuant to Rule 55(b)(2), SCRCP, alleging that Respondents' Motion to Dismiss filed on October 26, 2020, was untimely. (App. Mot. for Default Jmt., R. pp. 113-18.)

On February 3, 2021, Respondents filed a Memorandum in Support of their Joint Motion to Dismiss (Resp. Mem. in Supp. MtD, R. pp.120-29) and a Memorandum in Opposition to Petitioner's Motion for Default Judgment (Resp. Mem. in Opp. MDJ, R. pp.130-35).

On February 9, 2021, the trial court conducted a hearing on Respondents' Motion to Dismiss and Petitioner's Motion for Default Judgment. (Transcript, R. pp. 136-75.) The Honorable Alison Renee Lee, Circuit Court Judge, presided.

At the hearing, both pro se Petitioner and counsel for Respondents were given ample time for arguments. Id. The trial court also granted Petitioner leave to file responsive memoranda after the hearing (Form 4 Order, R. p.176), and Petitioner filed a Response to Memorandum in Opposition to Motion for Default Judgment (R. pp. 198-201) and a Memorandum in Opposition to Defendants' Joint Motion to Dismiss (R. pp. 179-97) on February 16, 2021.

On June 29, 2021, the trial court issued the order that is the subject of Petitioner's appeal ("Order"). (Order, R. pp. 228-35.) In its Order, the trial court denied Petitioner's Motion for Default Judgment, finding that Respondents' Motion to Dismiss was timely in light of the automatic thirty-day extension of trial court deadlines in effect at the time. Id. at 230-31. The trial court also granted Respondents' Motion to Dismiss, finding that Petitioner has no private right of action to enforce the statutory violations alleged in the

FAC, that Petitioner lacked standing to bring the action, and that Petitioner's claims are moot. Id. at 231-34.

Petitioner did not file a motion to reconsider, alter, or amend the trial court's Order but filed a Notice of Appeal in the South Carolina Court of Appeals on July 26, 2021. On appeal, Petitioner made the following arguments:

1. The circuit court erred in denying his motion for default judgment; and
2. The circuit court erred in dismissing his action pursuant to Rule 12(b)(6), SCRPC, because
  - a. Petitioner did not seek to challenge or enforce the state elections statutes but sought relief under the Uniform Declaratory Judgments Act and Rule 65(c), SCRPC; and
  - b. Petitioner has standing to sue under the public importance exception.

On May 22, 2024, a unanimous panel of the Court of Appeals affirmed the circuit court's dismissal of Petitioner's action pursuant to Rule 12(b)(6), SCRPC, because (1) the statutes Petitioner claimed were violated did not provide for a private right of action and (2) the public importance exception to standing was inapplicable. Based on this determination, the Court of Appeals found it unnecessary to address Petitioner's arguments regarding default judgment.

Petitioner filed a petition for rehearing on June 6, 2024, which the Court of Appeals denied by order dated April 12, 2024.

On October 10, 2024, Petitioner filed his Petition for a Writ of Certiorari. This Return follows.

## **ARGUMENTS**

A writ of certiorari is not guaranteed to any litigant but, rather, is granted in the sound discretion of the Court only where “special and important reasons” exist. Rule 242(b), SCACR. Such reasons for granting certiorari include (1) where there are novel questions of law; (2) where there is a dissent in the decision of the Court of Appeals; (3) where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court; (4) where substantial constitutional issues are directly involved; and (5) where a federal question is included and the decision of the Court of Appeals conflicts with a decisions of the United States Supreme Court. Id.

No “special and important reasons” for issuing a writ of certiorari exist here.

### **I. THE COURT OF APPEALS CORRECTLY AFFIRMED THE TRIAL COURT’S DISMISSAL OF PETITIONER’S ACTION UNDER RULE 12(B)(6), SCRCF.**

#### **A. The Court of Appeals correctly determined that Petitioner’s arguments regarding the Uniform Declaratory Judgments Act and Rule 65(c), SCRCF were not preserved for appeal.**

Petitioner contends that his arguments regarding the Uniform Declaratory Judgments Act (UDJA) and Rule 65(c), SCRCF, were properly preserved for appellate review because his Complaint was captioned “Complaint for Declaratory and Injunctive Relief Pursuant to SC Code §§ 15-53-10 and 15-53-90” and because he requested certain declarations in the Complaint’s Prayer for Relief. Petitioner then attempts to shift blame for any preservation issue to the circuit court itself, complaining that “a hearing was never held regarding the gravamen of the action” (Pet. for Writ, p. 11) and that “the failure of the Circuit to address the request for declaratory judgment and thereby denying it without a written explanation is itself a violation of law and, therefore, an abuse of discretion” (id. at 13). Petitioner’s argument is self-defeating.

“It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [circuit] court to be preserved for appellate review.” Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (emphasis added). “There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity.” S.C. DOT v. First Carolina Corp., 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007) (quoting Jean Hoefer Toal et al., Appellate Practice in South Carolina 57 (2d ed. 2002)). Accordingly, “[i]f the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.” I’On, L.L.C. v. Town of Mt. Pleasant, 388 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

As a preliminary matter, Petitioner never expressly raised his arguments attempting to distinguish between relief sought under the UDJA and the election statutes to the trial court, despite having ample opportunity to do so at the hearing on Respondents’ Motion to Dismiss (R. pp. 136-75), in the Memorandum in Opposition to Respondents’ Motion to Dismiss (R. pp. 179-97) he filed after the hearing, or in a motion pursuant to Rule 59(e), SCRCP. To the extent the issue could be considered properly “before” the circuit court by virtue of the caption and prayer for relief in the First Amended Complaint, the circuit court never addressed Petitioner’s request for declaratory judgment, as Petitioner himself highlights and concedes. Therefore, it was incumbent upon Petitioner to raise the issue with specificity in a Rule 59(e), SCRCP, motion to alter or amend a judgment. Petitioner did not file a motion pursuant Rule 59(e), SCRCP, but

argued for the first time on appeal that the trial court erred in dismissing the First Amended Complaint without addressing his request for declaratory judgment.

Because Petitioner's declaratory judgment argument was not raised to and ruled upon by the circuit court, the Court of Appeals correctly found that the issue was not preserved for appeal.<sup>1</sup>

**B. The Court of Appeals correctly affirmed the circuit court's findings that the statutes Petitioner alleges were violated do not create a private right of action and that Petitioner lacked taxpayer standing, and Petitioner has raised no special and important reasons for reviewing this decision.**

Petitioner does not raise any special and important reason, and none exists, for this Court to review the Court of Appeals' decision affirming the circuit court's determination that the election statutes at issue did not provide a private right of action and that Petitioner lacked standing. Instead, Petitioner largely regurgitates the same arguments he made in his Final Brief to the Court of Appeals. For economy in responding to Petitioner's duplicative arguments, Respondents respectfully direct this Court to, and incorporate herein by reference, Section III of their Final Brief to the Court of Appeals.

## **II. THE COURT OF APPEALS CORRECTLY CONCLUDED THAT PETITIONER FAILED TO PRESERVE TWO ARGUMENTS FOR APPEAL.**

With respect to Petitioner's failure to preserve his argument that he did not seek to challenge or enforce any statute, Respondents respectfully direct this Court to, and incorporate herein by reference, Section I.A. of this Return.

---

<sup>1</sup> Petitioner also raises issue preservation as a separate question presented for review (Question 2); however, Petitioner's only substantive arguments regarding issue preservation are set forth in the body of his Petition as part of Question 1. Therefore, Respondents respond in full to those arguments here.

With respect to Petitioner’s failure to preserve a separation of powers argument—a point which Petitioner raises by heading only in his Petition—Respondents submit that this portion of the question is not preserved for review because it was not raised in Petitioner’s Petition for Rehearing to the Court of Appeals. See Rule 242(d)(1), SCACR (“Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.”).

**III. THE COURT OF APPEALS’ DENIAL OF PETITIONER’S MOTION TO AMEND THE STATEMENT OF ISSUES ON APPEAL AND TO SUPPLEMENT THE RECORD ON APPEAL PURSUANT TO 212(B), SCACR, IS NOT A BASIS FOR GRANTING CERTIORARI.**

Lastly, Petitioner argues the Court of Appeals committed a reversible error by denying his requests to amend the statement of issues on appeal and supplement the record on appeal made by motion filed on April 26, 2024. Petitioner cites no authority in support of his argument, as required by Rule 242(d)(3), SCACR.

The Court of Appeals acted within its discretion to deny Petitioner’s requests to amend his statement of issues on appeal and supplement the record on appeal, pursuant to Rule 212(b), SCACR, to include a non-binding circuit court decision issued during the pendency of Petitioner’s appeal. This was not a reversible error, nor is it a “special and important reason” for granting certiorari.

**CONCLUSION**

As set forth above, Petitioner wholly fails to raise any “special and important reasons” justifying the Court’s review under Rule 242, SCACR. Therefore, Respondents respectfully request that the Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

s/ Grant Burnette LeFever  
Nekki Shutt (SC Bar 8784)  
Grant Burnette LeFever (SC Bar 103807)  
BURNETTE SHUTT & McDANIEL, PA  
912 Lady Street, 2nd Floor (29201)  
PO Box 1929  
Columbia, South Carolina 29202  
Telephone: (803) 904-7912  
Fax: (803) 904-7910  
NShutt@BurnetteShutt.Law  
GLeFever@BurnetteShutt.Law

**ATTORNEYS FOR RESPONDENTS**

Columbia, South Carolina

November 11, 2024

**Nov 12 2024****S.C. SUPREME COURT****CERTIFICATE OF SERVICE**

This is to certify that on November 11, 2024, Respondents' Return to Petition for a Writ of Certiorari was served, by United States Mail, postage prepaid and return address clearly indicated on said envelope, to the party at the following address:

Johnnie Cordero  
4204 Mandel Drive  
Columbia, SC 29210

**Petitioner, Pro Se**

s/ Grant Burnette LeFever  
Nekki Shutt (SC Bar 8784)  
Grant Burnette LeFever (SC Bar 103807)  
BURNETTE SHUTT & McDANIEL, PA  
912 Lady Street, 2nd Floor (29201)  
PO Box 1929  
Columbia, South Carolina 29202  
Telephone: (803) 904-7912  
Fax: (803) 904-7910  
NShutt@BurnetteShutt.Law  
GLeFever@BurnetteShutt.Law

**ATTORNEYS FOR RESPONDENTS**

Columbia, South Carolina

November 11, 2024